



**DEPARTMENT OF TRANSPORTATION**

**[4910-EX-P]**

**Federal Motor Carrier Safety Administration**

**[Docket No. FMCSA-2013-0069]**

**Hours of Service of Drivers: Timberdoodle Company's Application for Exemption**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of final disposition; denial of application for exemption.

**SUMMARY:** FMCSA announces its denial of Timberdoodle Company's

(Timberdoodle) request for an exemption from section 395.3(b)(1) of the "Hours of Service [HOS] of Drivers" regulations (49 CFR part 395). Section 395.3(b)(1) prohibits the operation of a commercial motor vehicle (CMV) by anyone who has accumulated 60 hours of on-duty time in a period of 7 days. Timberdoodle requested that its drivers be allowed to exclude from this calculation all on-duty time other than time actually driving a CMV. FMCSA concluded that Timberdoodle has not demonstrated how its CMV operations under such an exemption would be likely to achieve a level of safety equivalent to or greater than the level of safety that would be obtained in the absence of the exemption.

**DATES:** FMCSA denied the application for exemption by letter dated December 9, 2013, after notice and opportunity for public comment.

**FOR FURTHER INFORMATION CONTACT:** Mr. Thomas Yager, Chief, FMCSA Driver and Carrier Operations Division; Office of Bus and Truck Standards and Operations; Telephone: 202-366-4325. E-mail: [MCPSD@dot.gov](mailto:MCPSD@dot.gov).

## **SUPPLEMENTARY INFORMATION:**

### **Docket**

You may read background documents or comments filed to the docket of this application for exemption by going to [www.regulations.gov](http://www.regulations.gov) at any time, or to Room W12–140, DOT Building, 1200 New Jersey Ave. SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

### **Background**

FMCSA has authority under 49 U.S.C. 31315 and 31136(e) to grant exemptions from certain parts of the FMCSRs. The Agency is required to publish a notice of each exemption request in the **Federal Register** [49 CFR 381.315(a)]. FMCSA must provide the public an opportunity to inspect the information relevant to the application. The Agency must also provide an opportunity for public comment on the request. FMCSA reviews the public comments and determines whether granting the exemption would be likely to achieve a level of safety equivalent to or greater than the level of safety that would be obtained in the absence of the exemption (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** with the reasons for denying or granting the application [49 CFR 381.315(b) and (c)].

### **Application for Exemption**

Timberdoodle uses commercial motor vehicles (CMVs) to transport its products to conferences and conventions, where it sells them. It wants to use its CMV drivers as salespersons at these events, but the definition of “on duty time” in 49 CFR 395.2 requires that both the driving time and the sales time of its drivers be treated as “on duty time.” The result is that Timberdoodle’s drivers are frequently ineligible to drive its CMVs because they have exceeded the limit of 60 hours on duty in a period of 7

consecutive days. Timberdoodle asked for exemption from Section 395.3(b)(1) and proposed that its drivers be prohibited from operating a CMV only after they accumulate 60 hours of driving time in any 7-day period. Thus, “on duty/not driving” time would be removed from the calculation of total hours on duty in a 7-day period. A copy of Timberdoodle’s application for exemption is in Docket FMCSA-2013-0069.

### **Public Comments**

On May 3, 2013, FMCSA published notice of this application and asked for public comment (78 FR 26104). Four individuals and Advocates for Highway and Auto Safety submitted comments. All opposed the application for exemption.

### **Agency Decision**

FMCSA reviewed Timberdoodle’s application and the public comments. By letter dated December 9, 2013, FMCSA denied the application because the Agency concluded Timberdoodle’s operations were not likely to achieve a level of safety equivalent to or greater than the level of safety that would be achieved in the absence of the exemption [49 CFR 381.310(c)(5)]. Its drivers could accumulate up to 98 hours of on-duty (driving and not driving) time in a 7-day period before other HOS rules would bar their operation of a CMV.

Timberdoodle did not offer any measures to offset the excessive driver fatigue that would no doubt be generated by such a schedule. Further, while Timberdoodle may prefer to operate in the manner outlined in its application, other practical approaches to its convention sales that would not require its CMV drivers to exceed the on-duty limits of 49 CFR 395.3(b)(1) may be available. A copy of the denial letter is in Docket FMCSA-2013-0069.

**Issued on:** April 1, 2014.

Larry W. Minor,  
Associate Administrator for Policy.

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